

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Assessment and Collection of Regulatory)	MD Docket No. 08-65
Fees for Fiscal Year 2008)	RM No. 11312
)	
Amendment of Parts 1, 21, 73, 74, and)	
101 of the Commission's Rules to)	WT Docket No. 03-66
Facilitate the Provision of Fixed and)	
Mobile Broadband Access, Educational)	
and Other Advanced Services in the)	
2150-2162 and 2500-2690 MNz Bands)	

**REPLY COMMENTS OF
QWEST COMMUNICATIONS INTERNATIONAL INC.**

Qwest Communications International Inc. ("Qwest") submits these reply comments in response to the *Notice of Proposed Rulemaking* in the above-captioned proceeding.¹ Qwest supports the opening comments of AT&T Inc. ("AT&T")² and opposes the Joint Proposal submitted by certain submarine cable operators for changing the regulatory fee assessment methodology for international bearer circuits ("IBC").³ Qwest agrees with many of the commenters that reform of the IBC regulatory fee is needed, but disagrees that the Joint Proposal is the right solution for accomplishing that reform.

¹ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Amendment of Parts 1, 21, 73, 74, and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MNz Bands*, Notice of Proposed Rulemaking and Order, MD Docket No. 08-65, RM No. 11312 and WT Docket No. 03-66, rel. May 8, 2008 ("*Final Order*").

² See Comments of AT&T Inc., filed May 30, 2008.

³ See Joint Proposal, filed on behalf of Pacific Crossing Limited, PC Landing Corp., Level 3 Communications, LLC, Brasil Telecom of America, Inc., Columbus Networks USA, Inc., ARCOS-1 USA, Inc., A.SUR Net, Inc. and Hibernia Atlantic US LLC, filed May 30, 2008.

Qwest agrees with the comments that recognize that the manner in which the market currently sells IBCs, especially high-capacity IBCs, and the regulatory fees associated with these IBCs are incongruous.⁴ As has been pointed out by others, the IBC regulatory fees become a higher percentage of the cost of the circuits as the capacity increases, because the prices at which the higher capacity is offered do not increase in step with the increased capacity offered.⁵ The impact of this situation, however, is not solely the burden of non-common carrier submarine cable operators, but is the burden of all who sell higher capacity IBCs. Thus, any solution to address the disparity between the IBC fees assessment methodology and the market for IBCs should not be for the benefit of only one type of provider. As others have noted, addressing the problem for only one type of IBC provider is only likely to exacerbate the problem for other IBC providers.⁶ Qwest opposes the Joint Proposal because it is not competitively neutral, but is designed to benefit non-common carrier submarine cable operators and probably at the expense of other IBC providers.

Another troubling aspect of the current IBC fees assessment methodology is that relying on active circuits to calculate the fee is problematic where not all payers report active capacity or can readily determine their active capacity. Currently, it appears that the Federal Communications Commission (“Commission”) relies primarily on the total active circuits reported pursuant to 47 C.F.R. § 43.82 to estimate the number of IBC fees payment units (*i.e.*,

⁴ See Comments of Global Crossing North America, Inc., filed May 30, 2008; Letter of the Satellite Industry Association, filed May 30, 2008 and its attached previous filings of Apr. 30, 2004, Mar. 8, 2005 and Mar. 17, 2006 (“SIA Mar. 17, 2006 Comments”); Comments of Tata Communications (US) Inc., filed May 30, 2008.

⁵ See, *e.g.*, Comments of Pacific Crossing Limited and PC Landing Corp., filed May 30, 2008 at 9; Comments of Level 3 Communications, LLC, filed May 30, 2008 at 8-11 (“Level 3 Comments”).

⁶ See SIA Mar. 17, 2006 Comments at 3.

the number of active 64 KB IBCs) for the coming year. But, Section 43.82 reporting is only required of facilities-based providers engaged in providing international telecommunications service touching the United States and thus does not require reporting by non-common carrier IBC providers.⁷ As such, reliance on only the Section 43.82 reports of active circuits, would not capture the active IBC circuits of non-common carriers. But, the non-common carriers are generally required to pay IBC fees on their active circuits sold or leased to any customer (but not those sold or leased to an international common carrier authorized by the Commission to provide U.S. international common carrier services).⁸ To the extent those payment units were not included in the calculation of the fees, the fees paid on this additional, un-reported active capacity it seems would result in the International Bureau recovering more revenue in IBC fees than was budgeted to be collected. Thus, instead of the un-reported active capacity being captured upfront for the fee calculation and reducing the IBC regulatory fee for all IBC providers, it may instead be resulting in excess revenue collection.⁹ This problem highlights the need to better tailor the regulatory fees to the activities being regulated.

Yet, even with these concerns about the current IBC fees assessment methodology, the current assessment methodology is at least competitively neutral in application. All IBC providers must pay a set fee per active 64 KB circuit capacity for their IBCs. But, certain submarine cable operators are proposing that the fee methodology be altered such that only non-common carrier submarine cable operators pay IBC regulatory fees under a different fee

⁷ See 47 C.F.R. § 43.82.

⁸ See Regulatory Fees Fact Sheet, dated Aug. 2007 at 3.

⁹ A non-discriminatory and competitively neutral way to resolve this problem could be to require all payers of the IBC fee to report their active circuit capacity. But, requiring reporting of active capacity only for the purpose of assessing regulatory fees should be avoided. Another solution must be found.

structure than the other IBC providers. The record does not justify the special treatment proposed by these providers.

An initial concern with the Joint Proposal is that it is not sufficiently substantive or detailed to support adoption of any rules by the Commission at this time. Additionally, even the joint proposers recognize that the Proposal identifies “general principles” on which the proposers themselves “have their own views on how these principles might be implemented, interpreted, or even extended.”¹⁰ A further record would need to be developed before the Commission could reasonably take any action in line with the Joint Proposal.

Initially the Joint Proposal creates two new fees to replace the current IBC regulatory fee -- the “SCS Fee” -- to be paid only by non-common carrier submarine cable operators -- and the “new IBC fee” -- apparently to be paid by all other IBC providers. The current IBC fees requirement of \$8,149,636 for fiscal year 2008 is initially split in half between the two new fees. Immediately, however, the SCS Fee requirement is to be adjusted downward based on the presumptively lesser regulatory effort by the Commission to regulate undersea cable (presumably non-common carrier undersea cable) compared to the Commission’s regulation of common-carrier undersea cable and all other IBC providers. There is first a question of whether there would actually be a factual basis for such a downward adjustment. But, if there is, there is the further concern that if the SCS Fee requirement were adjusted downward, that the revenue requirement for the “new IBC fee” would be adjusted upwards. And, given that the revenue requirement for the current IBC fee has increased each year for at least the past four years,¹¹ it

¹⁰ Joint Proposal at 1.

¹¹ See *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, Notice of Proposed Rulemaking, MD Docket No. 05-59, 2005 FCC Lexis 1110, rel. Feb. 11, 2005 (“*Original NPRM*”); *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, Notice of Proposed Rulemaking, MD Docket No. 06-68, 21 FCC Rcd 3708,

seems likely that between these two new fees, at least one of the revenue requirements would increase.

Next, the Proposal creates a new “payment unit” for the SCS Fee. Instead of a fee per 64 KB active capacity IBC, now it appears it would be a fee per cable landing license, capped at a maximum of \$100,000 per license. The notion of a maximum payment per license may create payment shortfalls given the manner in which the regulatory fee is assessed. It is not clear to Qwest exactly how the proposed SCS Fee calculation is supposed to work. But, if the methodology is to take the SCS Fee revenue requirement and divide that by the number of cable landing licenses held by non-common carrier submarine cable operators to arrive at the fee, then there is a shortfall problem if that fee amount is greater than \$100,000.

Finally, it appears that the Proposal would not permit common-carrier submarine cable operators to pay a fee per cable landing license like their fellow submarine cable operators paying the SCS Fee. Instead, it seems these submarine cable operators would still pay based on the current 64 KB active circuit methodology. These completely different fee structures for submarine cable operators based solely on their common-carrier or non-common carrier status is not competitively neutral.¹²

rel. Mar. 27, 2006; *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712, rel. Aug. 6, 2007; and the May 8, 2008 *Final Order*.

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Revenue	7,244,186	7,512,292	7,791,000	8,149,636
Bearer Ckts	3,600,000	5,300,000	7,200,000*	7,500,000
Reg Fee	\$2.01	\$1.42	\$1.05*	\$1.09

* The *Original NPRM* rate of \$1.16 and ckt count of 6,500,00 was changed in the *Final Order* (the revenue forecast did not change).

¹² To the extent the Joint Proposal is intended to require common carrier submarine cable operators to pay both fees, *see* Level 3 Comments at 18, unless the regulatory activities these

Qwest agrees with other commenters that the manner in which the current IBC regulatory fees are calculated is problematic and in need of reform. But, Qwest disagrees that the Joint Proposal is a fair way to address the problems with the current assessment methodology. At least the current methodology is competitively neutral. The Joint Proposal is not. Until an alternative solution that is competitively neutral and non-discriminatory is proposed, Qwest prefers to leave the current IBC fee assessment methodology in place.

For these reasons, Qwest respectfully urges the Commission not to make any changes to the IBC fees regulatory assessment methodology at this time that would implement a separate IBC fee assessment methodology for only non-common carrier submarine cable operators.

Respectfully submitted,

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fees are recovering are clearly distinct and not overlapping, this obligation is even more discriminatory in that it results in common submarine cable operators paying twice for overlapping regulatory activity.

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY**
COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC. to be: 1) filed
with the FCC via its Electronic Comment Filing System in MD Docket No. 08-65, RM No.
11312 and WT Docket No. 03-66; 2) served via First Class United States Mail, postage prepaid,
on the parties listed on the attached service list; and 3) served via e-mail on the FCC's
duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com.

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